(3)

Supreme Court, U.S.
FILED
MAY 22 1997
OFFICE OF THE CLERK

Number - 96-1534

==========

Supreme Court of the United States
October Term, 1996

==========

Kevin P. Sweeney
(Petitioner)
v.
Mayor & City Council of Baltimore
(Respondent)

==========

On Petition For Writ of Certiorari
To the Court of Appeals of Maryland
(On Appeal from the Circuit Court)
(On Appeal From the District Court)

==========

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

==========

Kevin P. Sweeney (pro se)
3416 Wilkens Avenue
Baltimore, Maryland 21229
(410) 525-3549

30 pp

QUESTIONS PRESENTED

I. If Petitioner's allegations, as presented to this Court in his original PETITION FOR WRIT OF CERTIORARI (and as were brought before the court which heard the case and the courts which reviewed the case upon appeal) are incorrect, then why didn't the Attorneys for Respondent:

1. state they are incorrect; and
2. support their contentions by citing the pertinent parts from the record of the original proceeding, which, allegation by allegation, show that the asserted allegations are incorrect?

II. Are the Attorneys for Respondent trying to pull a `con job' on the members of this Court by fraudulently (?) citing, as justification for their position, statutes which not only do not apply to "personal property" taxes but are also unconstitutional?

III. How can the Attorneys for Respondent claim that the preservation of the integrity of the provisions of U.S. Constitution and the Maryland State Constitution is not in the public interest, especially since they have (presumably) taken the constitutionally required oath to uphold the Constitution of the United States and the constitutionally required oath to uphold the Constitution of the State of Maryland?

TABLE OF CONTENTS

PAGE

Questions Presented i

Table of Contents ii

Table of Cited Authorities iii

Constitutional & Statutory Provisions . v

Argument 1

Summary 16

Conclusion 18

TABLE OF CITED AUTHORITIES

PAGE

I. U.S. Constitution:
1. Art. 3, Section 1 16
2. Art. 3, Section 2 16
3. Art. 6, Clause 2 14
4. Art. 6, Clause 3 10
5. Amendment 14, Section 1 14

II. Maryland Constitution:
1. Declaration of Rights:
i. Article 2 14
ii. Article 8 12
iii. Article 20 16
iv. Article 44 17
2. i. Article I, Section 9 11
ii. Article IV, Section 1 11

III. Statutory Provisions:
1. United States;
28 USC Section 1257 16
2. Annotated Code of Maryland
i. Tax-General Art., §13-1104
GENERAL REVISOR'S NOTE;
a. Structure 9
b. Terminology 4
ii. Tax-Property Art. §14-1103
a. Structure 9
b. Terminology 4
iii. Tax-Property Art., §14-865 ... 7,8
iv. Tax-Property Art., §14-866 ... 7,8
v. Tax-Property Art., §14-869 ... 7,8

IV. Rules of the supreme Court; #10 ... 14

V. Court Citations:

1. Criminal Injuries Board v. Gould, 273 Md. 486, ... 14
2. Dal Maso v. County Commrs., 182 Md. 200, 34 A. 2d 464 12
3. Heath v. Mayor & City Council of Baltimore 187 Md. 296 [1946] .. 4
4. J.B. Corporation v. Fowler 258 Md. 432 [1970] 5
5. Morgan v. U.S. 298 U.S. 468 [1936] 5
6. Olmstead v. U.S. 277 US 438 17
7. Robb v. Connolly 111 US 624 15
8. Shell Oil Co. v. Brownley, 181 Md. 8 1
9. Shell Oil Co. v. Supervisor, 276 Md. 36 12
10. Snyder v. Mass 291 U.S. 97 [1932] 5
11. Virginia v. Rives, 100 Sup. Ct. 313 15

VI. Citations from the transcript of Proceedings in Md. District Court:

1. Page 72, Line 7 2
2. Page 77, Line 4 6

CONSTITUTIONAL AND STATUTORY PROVISIONS

I. CONSTITUTION OF THE UNITED STATES OF AMERICA:

i. Article III, §1: The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

ii. Article III, §2: **The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution,** the Laws of the United States, and Treaties made, or which shall be made, under their Authority; .... (pertinent part highlighted)

iii. Article VI, Clause 2: **This Constitution,** and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any Thing in the Constitution or Laws of any States to the Contrary notwithstanding.** (pertinent part highlighted)

iv. Article VI, Clause 3: The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and **all executive and judicial Officers, of both the United States and of the several States, shall be bound by Oath or**

Affirmation, to support this Constitution; .... (pertinent part highlighted)

v. Amendment XIV, §1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.** (pertinent part highlighted)

II. CONSTITUTION OF THE STATE OF MARYLAND, DECLARATION OF RIGHTS:

i. Article 2: **The Constitution of the United States,** and the Laws made, or which shall be made, under the authority of the United States are, and **shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.** (pertinent part highlighted)

ii. Article 8: That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.

iii. Article 20. That the trial of facts, where

they arise, is one of the greatest securities of the lives, liberties and estate of the People.

iv. Article 44: That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; **and any departure therefrom, or violation thereof,** under the plea of necessity, or any other plea, **is subversive of good Government, and tends to anarchy and despotism.** (pertinent part highlighted)

III. CONSTITUTION OF MARYLAND, ARTICLE 1, SECTION 9: Every person elected, or appointed, to any office of profit or trust, under this Constitution, or under the Laws, made pursuant thereto, shall, before he enters upon the duties of such office, take and subscribe the following oath, or affirmation: I, ..., do swear, (or affirm, as the case may be,) that I will support the Constitution of the United States; and that I will be faithful and bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof; and that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ....., according to the Constitution and Laws of this State, ...

IV. MARYLAND STATUTORY PROVISIONS:

A) Tax-Property Article, Annotated Code of Maryland: (listed by Title-Section, but referred to as "section" throughout the code); [note: the first digit of the

'Section' number is the "subtitle" referred to in the statutes.]

i. §14-865; "**Duty to request action.**

(a) *In general.*- Except as otherwise provided in subsection (b) of this section:

(1) **if a tax** under this article is not paid when due to the State, the Governor, the Comptroller, of the Treasurer shall request the Attorney General to institute an action against the person responsible for the tax: and

(2) **if a tax** under this article is not paid when due to a county or municipal corporation, the collector shall request the attorney for the county or municipal corporation to institute an action against the person responsible for the tax.

(b) *Exceptions.* - An officer of the State, a county, or municipal corporation is not required to request the action under subsection (a) of this section if:

(1) the taxes are sufficiently secured by a lien on real property under this title; or

(2) it is certain that no part of a judgment in the action would be collectible."

ii. §14-866. "**Duty to initiate action; compromise of claim.**

(a) *Duty to initiate suit.*- If a request is made under §14-865 of this subtitle, the Attorney General or attorney requested to initiate an action shall initiate the action.

(b) *Compromise of claim.*- If the Attorney General and the Treasurer, or the collector, the chief fiscal officer, and the attorney of the county or municipal corporation agree that the full amount of the claim would be uncollectible, the Attorney General or attorney may;

(1) compromise the claim;
(2) accept a lesser amount on behalf of the collector or State Treasurer; and
(3) issue a release of the claim or satisfaction of the judgment.

iii. Following §14-1103 of the 1986 edition of the Tax-Property Article:

GENERAL REVISOR'S NOTE TO ARTICLE

Structure of the Article:

In organizing this revision of the tax laws of the State, the Commission to Revise the Annotated Code decided to arrange the tax laws in 2 articles, Tax-Property and Tax-General. **The Tax-Property Article is divided into 14 titles and incorporates all of the provisions concerning the valuation and assessment of real and personal property, the imposition of taxes and exceptions to taxes, the granting of credits, the payment and reporting requirements,and finally the procedural provisions.** Although there is a definite sequence from the valuation of property through the appeal and penalty process, the Commission decided to treat all of the steps in the process through the point at which the tax is due in the appropriate substantive title. Therefore, the Tax-Property Article is structured to place the administrative provision first, followed by the substantive provisions and the procedural provisions. **Title 14, Procedure, includes all events that take place after normal payment in full by the taxpayer,** i.e., the enforcement, appeals, interest, penalties, and collection provisions, as well as the provisions related to tax sales, refunds, and limitations. (emphasis added)

Terminology:

It is a precept of the Commission to Revise the Annotated Code to revise the law in a clear, straightforward manner, and, once something is said, to say it the same way every time it is said. To that end, in revising this article, the Commission has conformed the language and organization of this article to that of other revised articles, to the extent that the former law allowed.

Throughout the former law, the word "levy" was used in 4 different senses. It was used as a verb to mean imposing a tax and setting a tax rate. As a noun "levy' was used to mean the imposition of a tax and a lien against property. To avoid confusion in this article, the more precise references to "imposing" a tax, "setting" a tax rate, "imposition" of a tax, and "lien" are used. {emphasis added}

B) Tax-General Article, Annotated Code of Maryland: (listed by Title-Section, but referred to as "section" throughout the code); [note: the first digit of the `Section' number is the "subtitle" referred to in the statutes.]

i. Following §13-1104 of the 1988 edition of the Tax-General Article:

GENERAL REVISOR'S NOTE TO ARTICLE

As a result of an intensive analysis of the tax laws of the State, the Tax-General Article Review Committee has organized the tax laws into 2 revised articles, the Tax-Property Article and the Tax-General Article. The Tax-Property Article was enacted in 1985.

Structure of Article:

The Tax-General Article is divided into 13

titles and encompasses the following general taxes: (1) admissions and amusement tax; (2) alcoholic beverage tax; (3) boxing and wrestling tax; (4) death taxes (inheritance tax, Maryland estate tax, and tax on commissions); (5) franchise taxes (the financial institution franchise tax, which combines the former financial institution and savings bank and savings and loan associations taxes, the public service franchise tax, which formerly was designated the gross receipts tax, and the savings and loan association franchise tax); (7) income tax; (8) the sales and use tax, which combines the former retail sales and the former use taxes; and (9) tobacco tax.

The Tax-General Article Review Committee decided to arrange the article into 3 major areas of tax law - i.e., administrative provisions, substantive provisions, and procedural provisions. A similar structure was adopted for the Tax-General Article.

***

Terminology.

It has been a precept that the revision of this law should be clear and straightforward and, once something is said, it should be said in the same way every time. To that end, in revising this article, the Tax-General Review Committee has conformed the language and organization of this article to that of other revised articles, to the extent that the former law allowed.

Throughout the former law, the word "levy" was used in 4 different senses. It was used as a verb to mean imposing a tax and setting a tax rate. As a noun "levy' was used to mean the imposition of a tax and a lien against property. To avoid confusion in this article, the more precise references to "setting" a tax rate and "imposition" of a tax and "lien" are used. {emphasis added}

ARGUMENTS

I. Petitioner feels the answer to the first question is obvious. That is, the Attorneys for Respondent can't support their position from the evidence and proceedings as they appear "on the record". For instance, no **Baltimore City** statute imposing the alleged property tax was ever identified. (More on this in #2, page 6 of this section.) The question is: Can any government agency arbitrarily and capriciously assess and collect an alleged tax in the absence of an identified statute which clearly "imposes" such a tax? Petitioner has often stated the following sequence of lawful principles in his attempts to prevent the collection of the alleged property tax:

a. In the absence of a statute "imposing" a tax, there is no tax. (As put succinctly by the highest court of Maryland, using a quote from the supreme Court,:

> "And as to tax statutes, too, the Supreme Court has repeated what has often been said by other courts, that `it may be conceded that no tax can be levied without the express authority of law',". *Shell Oil Co. v. Brownley* 181 Md. 8 [1942])

b. In the absence of a statute imposing a tax,
   1) Petitioner is not established as being a "taxpayer" and
   2) there is no liability on the part of the Petitioner to the Respondent for the alleged tax.

c. In the absence of a liability to the Respondent, Respondent is not injured.

d. Having no "injury", Respondent has no "cause of action" and has no standing in any court

in regards to this matter.

e. In the absence of standing on the part of Respondent, NO court can have `jurisdiction´ and the case should have been immediately dismissed for lack of jurisdiction. (Which is what Petitioner has asserted from the very beginning.)

The above, by itself, gives this Court a more than sufficient legal basis to dismiss this case with prejudice for lack of jurisdiction with a finding of lack of substantial justification. Still, Petitioner is compelled to go further and provide the following `food for thought´ to hopefully enlighten the members of this Court to the chicanery Petitioner has been subjected to in asserting his rights. (This chicanery being perpetrated by the judges of the courts below, the present Attorneys for Respondent and the governmental actors of both Respondent and the State of Maryland.) The Attorneys for Respondent have presented no substantiation, from the record, for their position. Still, a few things they did offer must be commented on; for Petitioner wonders if by offering these things the Attorneys for Respondent are being fair to the principle of "justice" and/or are being disrespectful to this Court by trying to perpetrate a "smoke and mirrors" act on its members. Cases in point follow.

1. Petitioner has consistently and continuously asked "What statute imposes the alleged tax"; but has <u>never</u> questioned the authority of Respondent to "impose" a property tax. Just the opposite is true. During his closing argument (transcript page 72, line 7), Petitioner stated:

> "The power of the [Respondent] to have such a tax is not denied. However, [Respondent] has

> not shown any ordinance ... where the [Respondent] **HAS** enacted and imposed such a tax. Everything that the [Respondent], which is the City of Baltimore, has presented is **Maryland law.**"
>
> "The power to tax was subdelegated to Baltimore. This takes the State of Maryland out of the taxing authority, and it is given to Baltimore City. If there is to be a legitimate tax, and an exaction thereof, it must be according to the ordinances and the dictates of Baltimore City."
>
> "In the absence of this, which has not been specified, and the Court has not specified, this is an attempt to exact a tax for which there is no specified, determined, and stated statutory liability."

Since Petitioner admitted, in open court, that Respondent does have the authority to "impose" a property tax, why did the Attorneys for Respondent tell a lie(?) and state: "The Petitioner's main contention (NOTE: Petitioner's main contention, correctly stated is: Petitioner was DENIED presenting his defenses!) seems to be that he was not successful in presenting his defenses and challenges **to the levying of the tax** in the court action to collect the tax." Was it an attempt to influence this Court against Petitioner? Also, why do the Attorneys for Respondent continuously and exclusively use the word "levy" instead of the legally appropriate word "impose"? Could the reason be that the word "levy" was used in 4 different senses in the Md. Code and thus the Attorneys for Respondent are hoping that the members of this Court will inadvertently use the incorrect one and thus "confuse" this case? (The Md. Code was changed to

prevent this. See "Terminology", as used in the Tax-Property and Tax-General volumes of the Md. Code; found at pages `x´ and `xi´.)

Also, it should be noted well that the Attorneys for Respondent have not presented a single argument which addresses any of the specific "QUESTIONS PRESENTED" by Petitioner in his PETITION FOR WRIT OF CERTIORARI. Rather, they state "The Petitioner´s main contention seems to be that he was not successful in **PRESENTING** his defenses"; but make no claim nor cite anything from the record showing that Petitioner **WAS ALLOWED** to present his asserted defenses. (Instead, they present a supposed "comprehensive scheme for the challenging of tax decisions" which they would have this Court believe Petitioner should have followed. In `II´, page 9, this will be shown to be incorrect.) **The Attorneys for Respondent do not deny that Petitioner WAS denied due process!** The following 4 citations will not only show that Petitioner was denied due process because he was not allowed to present his defenses but also because Petitioner was denied "equal treatment under the law" since the courts below did not follow the lawful and righteous principles laid down by this Court and by the highest court in Maryland. The citations are:

> i) "However, the decisions of the board are reviewable, not only when there has been an erroneous interpretation of the law, but also when they impair personal or property rights by reason of an arbitrary or unlawful exercise of discretion." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 304 {1946}.

ii) "We think that the asserted defense that the

payments were gifts, if substantiated, would constitute a valid and meritorious defense. *** Since the trial court appears to have proceeded upon a contrary view of what would constitute a valid defense, we think that the denial of an opportunity to present the defense here asserted resulted in an abuse of the court's discretion ..." *J.B. Corporation v. Fowler* 258 Md. 432,435 [1970], (quoting from Ryan v. Johnson, 220 Md. 70 (pertinent part emphasized)

iii) "A defendant who has been denied an opportunity to be heard in his defense has lost something indispensable." *Snyder v. Mass*, 291 U.S. 97,116 {1932}.

iv) "If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given." *Morgan v. United States* 298 U.S. 468, 480 {1936}

2. Following Petitioner's closing argument, John C. Mayden, then counsel for Plaintiff and now one of the Attorneys for Respondent, stated in his rebuttal argument:

"This abuse and misuse of ordinances is just rattling at my municipal background. Ordinances are local. They are promulgated by the Council. There is exclusive ... exclusive, as in sole, jurisdiction with respect to this matter regarding establishing the tax here with the legislature, and it is codified in the Annotated Code of Maryland. *** So, to put it succinctly, ordinances have nothing to do with this. It is the State of Maryland and that Annotated Code,

> and so to come forward with all of this about what the Council did and those kind of things, really are off the point, and it confuses the issue." (Court transcript, page 77, line 4)

Compare this to what the Attorneys for Respondent now say in their BRIEF IN OPPOSITION. (page 3, line 21). That is:

> "similarly, under T-P Art., Section 6-202, **the City** and counties **may impose property taxes** on the assessment of property."

Not only is the word "impose" in there, but this citation is exactly the opposite of what Mr. Mayden told the District Court! Two very important questions come to mind:

A) First, and most importantly, since the Attorneys for Respondent now admit that Respondent CAN "impose" a property tax, why haven't they quoted, from the record, the statute which imposed the alleged tax? The answer is very simple: **NONE WAS EVER IDENTIFIED!**

B) Why did Mr. Mayden tell an untruth to the Judge in the District Court?;

3. The Attorneys for Respondent state: "The Petitioner began his resistance to being taxed by failing to make his report and questioning the Department as to their authority to require reports and to assess property". This is an untruth. Petitioner asked for the authority of the Department to require **HIM** to submit reports and to assess any of **HIS** property. There may in fact be an authority for the Department to require reports to be

submitted and to assess property; but if Petitioner and/or his property do not fall within the legal requirements, then the Department is attempting to act beyond its scope of authority. Petitioner has never admitted that any alleged "taxable personal property" exists; and to repeat from page 21 of Petitioner's PETITION FOR WRIT OF CERTIORARI:

> "The Dept. A/T admits that it has **no knowledge** of the existence of the alleged taxable personal property. The Dept. A/T further admits that upon direct investigation, **its own investigator found no taxable property.**"

In the absence of any property, there can be no requirement to file a report. Thus, there being no facts establishing the existence of the alleged property, how can the Attorneys for Respondent justifiably claim that the Petitioner **failed** to make his report? Likewise, how can there be a lawful assessment and/or taxation of non-existent property?

4. The Attorneys for Respondent state (page 7, line 15 of their BRIEF):

> "The City brought suit to collect the moneys owed, pursuant to T-P Art., §14-866. That action in the District Court of Maryland was governed by T-P Art., §14-869, which states:
>
> '(a) *Time of trial.* - If the plaintiff in an action under §14-866 of this subtitle ....'."

The provisions of §14-869 clearly depend upon "an action under §14-866". But the Attorneys for Respondent do not provide this Court with the provisions of §14-866. **WHY NOT?!** Could it be to

prevent this Court from realizing that the original "action" of Respondent was unlawful? §14-866 states:

> (a) *Duty to initiate suit.* - If a request is made under §14-865 of this subtitle, ..." (For entire text, see item `ii', page ix.)

The provisions of §14-866 depend upon §14-865. Both §14-865 (a) and (b) start with the phrase "**if a tax** under this article is not paid". (For entire text, see item `i', page viii). It has been shown in argument `I' above that no "tax" has been shown to exist. Thus, an "action" against Petitioner cannot be justly instituted under §14-865. It naturally follows that no "action" under §14-866 or §14-869 can be justly sustained since they are dependent upon an action instituted under §14-865. The Attorneys for Respondent accurately presented the provisions of §14-869. But in presenting this "truth", didn't they fail to "tell the whole truth" when they very conveniently failed to provide this Court with the provisions of another section upon which §14-869 depends? Is this an attempted "con-job" on the members of this Court?

Additionally, it should be well noted that T-P §14-869, the very section the Attorneys for Respondent attempt to use as a basis for their position, (middle of page 7, BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI), contains a provision which deals them a knockout punch. That is, §14-869(b)(ii) states:

> "(ii) shall give the defendant the burden of proving that the tax has been paid OR

ANY OTHER SUFFICIENT DEFENSE."

The Attorneys for Respondent, and the current judge/s in the court/s below, apparently want to ignore this provision and/or hope that it goes away. It is clear that the legislature of Md. recognizes defenses other than `the tax bill is paid´. So does, (or at least, did), the highest court in Md. (See the two citations in item `A.(i)´, page 14 of PETITION FOR WRIT OF CERTIORARI) Petitioner attempted to offer such `sufficient defense/s´ but was denied the opportunity to present them. So much for "equal treatment under the law"! So much for "due process"!

II. The Attorneys for Respondent cited several sections of the Tax-General Article (as opposed to the Tax-Property Article) to supposedly support their position. What the Attorneys for Respondent neglected to tell this Court is the fact that the Tax-General Article contains no provision relating to "personal property" and hence **HAS NO APPLICABILITY TO THIS CASE.** This is evident by the language found in the Tax-General volume itself. "**Structure of Article**", (see CONSTITUTIONAL & STATUTORY PROVISIONS; item IV,B,i; page x) states:

> "The Tax-General Article is divided into 13 titles and encompasses the following general taxes:".

It then goes on to list 9 types of taxes; "PROPERTY TAX" IS NOT INCLUDED!

Compare the above to the language of the analogous part of the Tax-Property Article. (i.e. - "**Structure of Article**"; see CONSTITUTIONAL &

STATUTORY PROVISIONS, item IV,A,iii; page ix). It states:

> " ... The Tax-Property Article is divided into 14 titles and **incorporates ALL of the provisions concerning the valuation and assessment of real property, the imposition of taxes ... and finally the procedural provisions.**". (emphasis and highlights added).

In reference to the procedural provisions, it continues:

> "Title 14, Procedure, **includes ALL events that take place after normal payment in full by the taxpayer, i.e., the enforcement, APPEALS, ...**". (emphasis and highlights added)

The Tax-General Article itself states that it does not apply to "property taxes"; and the Tax-Property Article states that "Title 14, Procedure, includes **ALL** ..." of the provisions relating to "appeals". So:

1. Why did the Attorneys for Respondent relate the Tax-General statutes to this Court?; and
2. Why do they try to use these inapplicable statutes as their basis for stating that "The Petitioner did not avail himself of any of his available remedies."?

After all, it's not nice to lie or mislead or tell untruths to the supreme Court. (It's also not ethical, fair, or legal; not to mention violative of Petitioner's rights and violative of their oaths to uphold the constitutions. [U.S. Const. Art. VI, Cl 3

& Md. Const. Art. 1, §9; see item `iv´, page vi and item `III´ page vii.])

But telling this Court "The Tax Court is authorized by statute to decide questions of law", and then citing the Tax-General Article as the alleged authorization is disingenuous. **Such a statute is unconstitutional under the provisions of the Maryland Constitution.** A citation from the highest court in Maryland will demonstrate this:

> "There are many respects in which the Maryland Tax Court lacks the characteristics normally associated with an entity exercising judicial authority. However, regardless of this, the Tax Court cannot be deemed to exercise initial judicial authority for a more fundamental reason. Under the Maryland Constitution, unlike the federal Constitution, the judicial function may be exercised only by those courts enumerated in the Constitution. With the exception of the express authorization to create intermediate courts of appeal, the General Assembly of Maryland, unlike the Congress, is not empowered to create additional "courts" to exercise judicial power.
>
> "That the judicial power of the State of Maryland is vested only in those courts enumerated by the Maryland Constitution is made clear by Art. IV, section 1:
>
> > `The judicial power of this State shall be vested in a Court of Appeals, and such intermediate courts of appeal, as shall be provided by law by the General

> Assembly, Circuit Courts, Orphans' Courts, such Courts for the City of Baltimore, as are hereinafter provided for, and District Court; all said Courts shall be Courts of Record, and each shall have a seal to be used in the authentication of all process issuing therefrom.'

"This Court has consistently held that under Art. IV, section 1, of the Constitution, the judicial function may not be exercised by entities other than those courts described in the Constitution. As stated in *Dal Maso v. County Commrs.*, 182 Md. 200, 205, 34 A.2d 464, 466 (1943):

> 'In this State, all judicial authority is only such as is provided for by Article 4 of the Maryland Constitution, and it has been decided that only judicial functions can be exercised which find authority in that Article..., and that no court not coming within its provisions can be established in this State. **This forbids any power in the Legislature to clothe administrative boards with any judicial authority.** There may be states in which it can be done, but Maryland is not one of them.'" *Shell Oil Co. v. Supervisor* 276 Md. 36,44 [1975] (emphasis added)

Continuing at page 46:

> "Moreover, Article 8 of the Declaration of Rights of the Maryland Constitution provides:

> 'That the Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other.'

> "This Court has consistently stated that Article 8 prohibits the courts from performing nonjudicial functions and prohibits administrative agencies from performing judicial functions."

It is bad enough that the Md. legislature has passed a flagrantly unconstitutional statute as part of the Tax-General Article (i.e.- §13-525). It is another thing for the Attorneys for Respondent to try to influence this Court by citing such an unconstitutional statute as substantiation for their position. It is still another thing, and highly despicable and fraudulent in the opinion of Petitioner, for the presiding judge of the original proceedings to hold that Petitioner should have "appealed" his questions OF LAW to the Tax Court and worse yet that this was upheld by the judges of the higher courts on appeal. This seems like a very propitious time for this Court to remind/inform all the judges and legislators of Maryland of the opinion of the Md. Court of Appeals regarding this matter. That is:

> " ... this Court, in a long line of cases, has consistently held that the Legislature CANNOT divest the courts of the inherent power they possess to review and correct

> actions by an administrative agency which are ARBITRARY, ILLEGAL, capricious or unreasonable." *Criminal Injuries Comp. Board v. Gould* 273 Md. 486,500 [1975] (emphasis added)

III. (a) The Attorneys for Respondent contend that "review is neither desirable nor in the public interest"; but having stated this offer nothing to support it. Petitioner on the other hand has dealt with this subject rather extensively in his "PETITION". Petitioner directs this Court to item (B), page 9, of Petitioner's PETITION FOR WRIT OF CERTIORARI for that write-up.

(b) The Attorneys for Respondent state this "case does not involve any important question of federal law" and that it "fails to meet any of the criteria for discretionary review by this Court, as set forth in Rule 10". The federal law involved is the U. S. Constitution, the "Supreme Law of the Land". (U.S. Const. Art 6, Cl 2 & Md. Const. DR Art. 2; item `iii', page v and item `i', page vi). The apparent `criteria' referred to are not exclusive of others. Rule 10 states so itself. That is: "... The following, although **NEITHER CONTROLLING NOR FULLY MEASURING THE COURT'S DISCRETION** ...." (emphasis added)

Petitioner has alleged, and documented, that he was denied "due process of law" as protected by the U.S. Constitution, Amendment 14, §1. **THIS IS THE FIRST OPPORTUNITY AT WHICH PETITIONER CAN AVAIL HIMSELF OF SUCH AN ALLEGATION.** The principle is stated by the supreme Court thusly:

> "But the violation of the constitutional provisions [of the 14th amendment], when

> made by the judicial tribunals of a State, may be, and generally will be, after the trial has commenced. It is then, during or after the trial, that denials of the defendant's right by judicial tribunals occur. Not often until then. Nor can the defendant know until then that the equal protection of the laws will not be extended to him. **CERTAINLY UNTIL THEN HE CANNOT AFFIRM THAT IT IS DENIED, OR THAT HE CANNOT ENFORCE IT, IN THE JUDICIAL TRIBUNALS.**" *Virginia v. Rives 100 Sup. Ct. 313 [1879]* (emphasis added)

Hence, before Petitioner could justly allege that he was denied due process of law by the State of Maryland, he had to exhaust all methods available to him to procure "due process". All such methods were exhausted when Petitioner filed, and was denied, his MOTION FOR RECONSIDERATION of his PETITION FOR WRIT OF CERTIORARI to the Court of last resort in Maryland. Now, Petitioner can take his case to this Court. This Court has stated not only its ability to use its discretion to ensure that the State courts protect every right granted or secured by the Constitution of the United States but also its apparent desire and dedication to do so. As stated in *Robb v. Connolly* 111 U.S. 624, 637 {1884}:

> "Upon the State courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. ***. If they fail therein, and

> withhold or deny rights, privileges, or immunities secured by the Constitution and laws of the United States," **the party aggrieved may bring the case from the highest court of the State in which the question could be decided to this court for final and conclusive determination."** (emphasis added)

The jurisdiction of this court is invoked under 28 U.S.C. section 1257. (Previously stated at page (x) of Petitioner's PETITION FOR WRIT OF CERTIORARI.) The `inherent' power of this Court is stated in U.S. Constitution Art. 3, Sections 1 and 2. (see items `I,i' and `I,ii', page v)

SUMMARY

All of Respondents actions, and also those of all the Government agencies and/or actors upon which Respondent relies, are founded on `maybes', `possibilities', `beliefs' and `innuendo'. To have brought suit against Petitioner, and worse to have entered and upheld a judgment against Petitioner, based upon such `non-factual' items, violates Petitioner's rights as stated in the Md. Constitution Declaration of Rights Article 20. That is:

> "That the trial of **FACTS**, where they arise, is one of the greatest securities of the lives, liberties and estate of the People."

Petitioner has demonstrated that the Attorneys for Respondent have supplied this Court with statutes which are inapplicable to this case and are

unconstitutional as compared to the Maryland Constitution. The words of this Court in *Olmstead v. U.S.* 277 U.S. 438 [1928] come to mind. As a paraphrase: The Court will protect itself. Aid is **DENIED** to he who comes with **UNCLEAN HANDS**.

The Attorneys for Respondent have failed to show that the allegations of Petitioner, stated in his PETITION FOR WRIT OF CERTIORARI, are incorrect. Thus, EACH allegation forms, (and formed for the courts below), a basis for this Court to issue an 'order' dismissing this case with prejudice for lack of jurisdiction with a finding of lack of substantial justification.

Petitioner has also demonstrated the statutory authority and the apparent willingness and desire of this Court to "guard, enforce and protect every right granted or secured by the Constitution of the United States" when a State court fails to do so.

In light of the above, Petitioner feels this is a good time to recall the Md. Constitution Declaration of Rights Article 44. That is:

> "That the provisions of the Constitution of the United States, and of this State, apply, as well in time of war, as in time of peace; and **any departure therefrom, or violations thereof, under the plea of necessity, or any other plea, is subversive of good Government, and tends to anarchy and despotism.**" (emphasis added)

Once the <u>lawful</u> principles are understood and followed, the "summary" can simply and concisely be

stated as:

1. In the absence of a statute "imposing" a tax, there is no tax;
2. Petitioner has shown that the single "QUESTION PRESENTED" to this Court by the Attorneys for Respondent is founded in neither law nor fact; and
3. This Court has the lawful, constitutional authority and duty to rule on, and dismiss, the action against Petitioner.

CONCLUSION

This court should issue an ORDER dismissing this case with prejudice for lack of jurisdiction with a finding of lack of substantial justification.

Kevin P. Sweeney (pro se)
3416 Wilkens Avenue
Baltimore, Maryland 21229
(410) 525-3549